

JOHN F. SCHMELZER

IBLA 80-412

Decided December 2, 1980

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring the Palmyra mining claim abandoned and void. C MC 153272.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, was required to file a copy of the official record of the notice or certificate of location, with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim must be deemed abandoned and void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims: Location -- Mining Claims: Recordation -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

APPEARANCES: John F. Schmelzer, pro se.

## OPINION BY ADMINISTRATIVE JUDGE GOSS

John F. Schmelzer appeals from the February 4, 1980, decision of the Colorado State Office, Bureau of Land Management (BLM), returning appellant's certificate of location for failure to comply with the requirements of 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2(a).

The Palmyra mining claim was originally located by Organ Reynolds and A. A. Schmelzer on June 16, 1913. An amended certificate of location was recorded October 2, 1967, by the Western Exploration and Management Company and John F. Schmelzer. A copy of that location notice was filed with BLM on February 4, 1980.

On February 19, 1980, appellant filed a timely notice of appeal stating that assessment work had been accomplished and taxes paid during time of ownership, and that he did not have copies of the location certificate until January of 1980 "because I did not realize they existed until I asked the County Clerk to make a search."

[1, 2] Section 1744(b) requires in part:

The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

Section 3833.4 provides in part: "(c) Failure to file as constituting abandonment; defective or untimely filing. The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim \* \* \*."

Although it is not clear whether appellant personally recorded the notice of location in 1967, his name appears thereon. All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations. Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947); Canyon View Mining Co., 49 IBLA 184 (1980); 44 U.S.C. §§ 1507, 1510 (1976). Neither the Federal Land Policy and Management Act of 1976 nor the regulations provide the Department any leeway in the application of the penalty for failure to file the required documents.

The mandate of the statute is clear. The owner of an unpatented mining claim located prior to October 21, 1976, had until October 22, 1979, to make the required filings. Failure to comply with the statute and regulation must result in a conclusive finding that the claim has been abandoned and is void. John Lincoln, Jr., 49 IBLA 335 (1980); Frank Otegui, 49 IBLA 40 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joseph W. Goss  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

